HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Criminal Misc. Appl. No. 912 of 2005

Date of Decision : 7th March, 2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting

Date Initial of

Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Main No. 912 of 2005

S. Narendrakumar & Co.
"Nand Ashish", R.B. Mehta Marg,
Ghatkopar (East)
Mumbai – 400 077 … Petitioner

Versus

1. State of Uttaranchal through Chief Secretary

2. Shri Ajab Singh Rawat
Food Inspector
Office of the Chief Medical Officer
Pauri Garhwal … Respondents

Ms. Menka Tripathi, learned counsel for the petitioner
Sri K.S. Rautela, learned A.G.A. for the State.

Hon'ble J.C.S. Rawat, J.

This petition has been filed by the petitioner for quashing the complaint as well as the resultant proceedings incidental thereto pending against the petitioner on the file of learned Chief Judicial Magistrate, Pauri Garhwal in Criminal Case No. 196 of 2003.

Brief facts for the disposal of this petition are that a complaint was lodged by Food Inspector before the C.J.M. Pauri Garhwal. It is alleged in the petition that the Everest Chillies Power was taken from Sri Indra Singh Rawat-accused No. 1 and the same was sent to the analysis by the Public Analyst, Lucknow which was found not bearing a label declaration in accordance with Sub-clause (i) of Rule 32 of the Prevention of Food Adulteration Rules, 1955 which requires the manufacture to declare on the label of the product a statement specifying the time upto which the product would be fit for sale and consumption.

Learned C.J.M. after examining the complaint took the cognizance by 7/16 Porhibition of Prevention of Food

Adulteration Act, 1954. He has also arrayed the accused person-petition as a manufacturer of the said chillies powder.

It is contended that there is no averment in the complaint that any warranty or invoice was given to the accused No. 1. It was also contended that it was obligatory on the part of the complainant to aver in the complaint that there was a warranty or invoice issued by the manufacturer. In absence of such averment, the cognizance order cannot be passed against the manufacturer and the cognizance can only be taken under the provisions of Prevention of Food Adulteration Act.

The learned counsel in support of his arguments has referred the decision in **M/s Chet Ram Parumal Oil Mill Vs. State of U.P. and another 1999(38) ACC p/938,** in which it has been held:-

"5. I have heard Mr. B.D. Mandhyan learned counsel for the applicant and learned A.G.A Inspite of notices being served to the opposite party, no counter affidavit has been filed. The revision is pending since 7.12.1984 and about 14-1/2 years have elapsed. Learned counsel for the applicant contended that the name of the applicant was not disclosed by the vendor as required by section 14 of the Act. No copy of the notice was sent by the Food Inspector in accordance with the provisions of Section 13(2) of the Act. The learned counsel for the applicant also referred to Section 14 of the Act, which requires the manufacturer not to sell any article of food to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Section 14 of the Act, further provides that the bill, case memorandum or invoice given by the manufacturer. Learned counsel for the applicant contended that the applicant contended that the applicant had neither given any warranty nor any bill, cash memorandum or invoice to the vendor not the Vendor had

Purchased the oil-tins from it, therefore, the applicant could not be tried. It was next contended that by the learned counsel that in the absence of any evidence available on the record or collected by the Food Inspector, the applicant could not be summoned. The learned counsel also referred to Section 20-A of the Act which empowers the Magistrate to summon the manufacturer at any stage of the trial if any evidence is adduced before him that the manufacturer is also concerned with the offence."

The learned counsel in support of his arguments has also referred the decision in **Om Prakash Shivprakash Vs. K.I. Kuriakose SCC 1999 (8) p/633** that the court has the power to implead the manufacturer, distributor or dealer under section 20-A of the Prevention of Food Adulteration Act and this power cannot be invoked before the stage of adducing the evidence in the trial. The Hon'ble Supreme Court has further clarified that the trial for the offences under the Act beings when the Magistrate asks the accused whether he pleads guilty or not as envisaged in section 251 of the Code. The evidence can be adduced only after recording the plea of the accused. Thus, the position is clear that power under section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked after the conclusion of the trial.

The learned AGA conceded the position of law as has been laid down under section 14 and 21 (A) of the Act.

In the instant case, the petitioner had neither given any warranty nor any bill, cash memo or invoice to the vendor. In view of the above position of law and fact, the petitioner is not liable to be tried at this stage.

In view of the foregoing discussion, I find that the Magistrate concerned has committed an error in summoning the applicant. Therefore, the proceedings against the petitioner as mentioned above under section 7/16 Prevention of Food Adulteration Act is quashed only against the petitioner.

However, It is made clear that at any stage of the trial it any evidence is brought on record indicating that the petitioner is concerned with the crime it shall be open to the court concerned to summon the petitioner and proceed against him.

The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

7th March, 2006
Shiv